

BEFORE THE  
BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty )  
Relief-Petition for Reinstatement of Revoked )  
License of: )

Agency Case No. 2000-71

OAH No. 2010040142

Wyman Chan, O.D. )  
5635 Stratford Circle #C46 )  
Stockton, CA 95207 )

Optometrist License No. 5017, )

Respondent. )

DECISION

The attached Decision is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective **October 27, 2010**.

It is so ORDERED September 27, 2010.



LEE A. GOLDSTEIN, O.D. MPA  
PRESIDENT  
BOARD OF OPTOMETRY

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BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty  
Relief-Petition for Reinstatement of Revoked  
License of:

WYMAN CHAN, O.D.,  
Stockton, California 95207

Surrendered Registration to Practice  
Optometry No. 5017

Petitioner.

Case No. 2000-71

OAH No. 2010040142

**DECISION**

A quorum of the Board of Optometry of the State of California heard this matter in Sacramento, California, on July 28, 2010. Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, presided over the proceedings, but did not participate in the making of the Decision.

Wyman Chan, O.D., appeared and was represented by Craig S. Steinberg, Attorney at Law.

Char Sachson, Deputy Attorney General, Department of Justice, represented the People of the State of California.

The matter was heard in open session. The record was closed, the matter was submitted and the Board adjourned to Executive Session, where it deliberated and decided the matter.

**FACTUAL FINDINGS**

1. The Board issued Wyman Chan, O.D., (petitioner) Certificate of Registration number 5017 (certificate) to practice Optometry in the State of California on July 15, 1968.

2. The Board and petitioner entered into a Stipulated Settlement and Disciplinary Order effective July 14, 2003, resolving allegations made by the Board against petitioner set forth in an Accusation filed against petitioner.

3. Petitioner agreed as part of the Stipulated Settlement and Disciplinary Order that there was a factual and legal basis for imposing discipline upon his certificate. Petitioner acknowledged that he engaged in unprofessional conduct with respect to four patients as alleged in the accusation; including failing to perform dilated fundus examinations, failing to document or obtain health histories, failure to obtain visual acuities for the patients, and failing to refer one patient to a physician.

4. As part of the Stipulated Settlement and Disciplinary Order, petitioner agreed to the revocation of his certificate, with a stay of the revocation for a period of three years, during which time the petitioner agreed to be placed on three years probation to the Board, subject to numerous terms and conditions. Those terms and conditions of probation included a 15 day actual suspension, taking and completing 40 hours of continuing education, taking and passing a re-examination, having his practice monitored, agreeing to certain restrictions of practice, and making payment of costs of investigation and prosecution in the amount of \$12,461.94.

5. Petitioner failed in four separate attempts to successfully complete the re-examination condition of his probation. The Board brought a Petition to Revoke Probation against petitioner in October 2005, on the grounds that petitioner had violated his probation by failing to successfully complete the re-examination condition of probation.

6. Petitioner entered into another Stipulated Settlement and Disciplinary Order, effective March 10, 2006, with the Board, resolving the allegations in the October 2005 Petition to Revoke Probation.

7. The second Stipulated Settlement and Disciplinary Order extended petitioner's existing and incomplete probation two years, subject to additional terms and conditions. One of those additional terms and conditions included that petitioner pass the clinical portion of the National Board of Examiners in Optometry (NBEO) exam within a specified period of time. Petitioner agreed that if he should fail to pass the examination and thus comply with the re-examination requirement on a timely basis, he would surrender his certificate to the Board. Petitioner further agreed that all of the allegations contained in the Accusation and Petition to Revoke Probation previously brought against petitioner would be deemed to be true, should petitioner seek to reinstate his certificate in the event he ended up surrendering the certificate as a result of this term and condition of probation.

8. Petitioner took the NBEO examination more than once within the required time period set forth in the additional probationary conditions. Petitioner failed the examinations. Although petitioner passed some individual components of each clinical examination in at least one of the exams, he did not succeed in passing all of the required

components together in any one session, and therefore was not found by the NBEO have successfully passed any of the three clinical skills examinations.

9. Petitioner filed an administrative appeal against the determination by NBEO that he failed the April 22, 2006 examination, for the same reasons he attacked the examination as unfair and not reflective of his skills and abilities in these proceedings (discussed below). The appeal of the examination outcome and petitioner's claims of unfairness in the examination itself and in the manner in which it was administered to him were found by NBEO as lacking merit and his appeal was denied.

10. Based upon the fact that petitioner failed to comply with the additional term and condition of probation requiring him to pass the NBEO examination, the Board sought the surrender of petitioner's Certificate. Petitioner surrendered his Certificate and wall and pocket certificates to the Board on September 29, 2006.

11. Petitioner filed a Petition for Reinstatement of his surrendered certificate with the Board on October 24, 2008, a little more than two years after the surrender of his certificate. Petitioner had previously submitted a Petition for Reinstatement in October 2007, which petitioner later withdrew.

12. It was not disputed that during the period of time that petitioner was on probation to the Board, petitioner complied with all material terms and conditions of his probation, with the notable exception of his failure to comply with the re-examination condition and his failure to pass the NBEO examination. At the time of his first Petition for Reinstatement, it was uncertain whether petitioner had paid all of the cost recovery provision of his probation, but it was undisputed that he had paid a portion of it.

13. In his first Petition for Reinstatement petitioner contended that his Certificate should be reinstated because he believed he had corrected the deficiencies that led to the disciplinary action. He contended that he was now able to provide a better standard of care for his patients. He also contended that his fluency in Cantonese allowed him to provide service to a portion of the population in his area where few optometrists were able to serve, due to the fact that there is a sizable Cantonese speaking portion of the population in his area.

14. As of the time of the hearing on his first Petition, petitioner had not been regularly employed since surrendering his Certificate. He worked for a brief period of time as an enumerator for the United States Census Bureau, and otherwise had volunteered his time for various local community activities.

15. As of the time of his first Petition for Reinstatement, petitioner had completed approximately 69 hours of continuing education. He had also been tutored by various optometrists in clinical skills and had studied various publications devoted to the practice of optometry.

16. Petitioner testified during the hearing on his first Petition for Reinstatement that he did not agree with the allegations made against him in the initial Accusation that led to the first disciplinary action imposed against his Certificate. Petitioner also testified that he did not believe the examinations administered to him while he was on probation were fair, and he claimed the examinations were not scored fairly. He also testified that he would not be agreeable to any restrictions placed on his practice, should his certificate be reinstated.

17. Petitioner acknowledged at the hearing on his first Petition for Reinstatement that he had not practiced optometry since December 2003. He acknowledged that nevertheless, he still maintained his optometry office and all his equipment. He admitted that signage outside his office on the building that includes his office identified him as an optometrist, and that he still has an active telephone line in his office with an answering machine message that indicated that he is an optometrist. He also acknowledged that he was still listed in the local Yellow Pages as an optometrist, and that he has not told many of his long-term patients that he was required to surrender his Certificate or that he is no longer permitted to practice optometry.

18. Petitioner's first Petition for Reinstatement was denied by the Board, effective January 28, 2009. The Board found that petitioner failed to meet his burden of proving that he was rehabilitated at that time or that cause existed to reinstate his Certificate.

19. Petitioner filed this instant Second Petition for Reinstatement on February 28, 2010.

20. Petitioner appended a lengthy statement to this Petition, enumerating why he feels reinstatement of his Certificate is appropriate and warranted. Petitioner's statement paralleled his testimony at the hearing. It consisted of an attack on the fairness and accuracy of the original findings against him in the initial 2003 Decision placing him on probation, and upon the lack of fairness in the NBEO examinations he was required to take and failed to pass that were conditions of his probations. Petitioner also claimed later in his statement to have "corrected the deficiencies"<sup>1</sup> that led to the disciplinary action, and therefore, he is able to provide a "better up to date standard of care" for his patients. He noted that he takes the practice of optometry very seriously, and wants to contribute to the good reputation of the profession. He noted that although his practice is not large, he is still able to contribute to the practice community. He understands and speaks Cantonese, and enjoys meeting, helping and growing with the diversity of patients his city has to offer, and he accepts Medi-Cal patients. He observed that he has tried his best to cooperate with the Board throughout the disciplinary process, including obtaining the cooperation of a colleague to monitor his practice, taken the proficiency examinations, paid \$12,461.94 in costs and fines, faithfully filed all his quarterly reports, had his office and patient records repeatedly inspected by the Board and completed 286 hours of continuing education between July 2003 and February 2010.

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<sup>1</sup> This is a curious claim, in light of the fact that petitioner has never acknowledged, other than in the Stipulations, that there was any factual or legal basis for the original disciplinary action against him, and in fact disputed the validity of the factual basis for that action in his testimony during this hearing.

21. Petitioner particularly took issue with the April 22, 2006 clinical examination he was required to pass, or surrender his license, as briefly referenced above. He claimed the examination was "quite unfair." He wrote that he was allowed only one partial attempt to pass the Goldman Tonometry test, and claimed that his scores on several skills tested were "definitely not commensurate with the actual performance."

22. Petitioner wrote that since November 2008, he has been tutored in clinical skills by Dr. Jennee Lee of Stockton, and in Goldman Tonometry and non-contact fundus examination by Dr. Eldon Risenow and Dr. Sean West of Modesto and in Goldman Tonometry and Biomicroscopy by Dr. Robert Felderstein of Stockton.

23. Petitioner's counsel challenged the Board's authority in the first instance to have ordered the petitioner to pass a clinical competency examination as a condition of practice on probation and/or as a condition that must be satisfied in order to continue on probation or surrender his license. The contention ignores the fact that petitioner was represented by counsel at every stage of the proceedings against him, both initially in response to the Accusation, and upon the Violation of Probation proceedings, and stipulated and agreed to these conditions. Any claim petitioner may have had that the Board was acting in excess of its authority in adding the clinical examination conditions as terms of the mutually agreed upon stipulations and Disciplinary Orders has long since been waived. A similar fate awaits petitioner's legal claim that petitioner never agreed to be required to demonstrate clinical proficiency in skills he had not been trained in and are not commonly used. Petitioner's claim that requiring him to demonstrate clinical proficiency in such skills was "outside the agreement" is also waived. The time to raise such objections was at the time the conditions were imposed and when it became evident that petitioner was being required to demonstrate clinical proficiency in areas outside what he understood he had agreed to demonstrate.

24. Petitioner's claim that it is very difficult for him to learn and demonstrate clinical proficiency in skills he was not taught during his education and training, which took place in the late 1960s and early 1970s, because he is barred from practicing on live patients does present a dilemma. Several times petitioner has requested permission to practice on actual patients or volunteers under the supervision of a tutor, but permission has been consistently denied. Petitioner contends this prohibition has significantly hampered his ability to learn and improve skills required to pass the clinical skills examinations. He points out that he has satisfied faithfully every other condition imposed upon him, and in 30 years of practice, these disciplinary actions are the only blemishes. Petitioner's claims that the patient's civil complaint that was the focus of the first Accusation action against him was dropped by the patient, and there never has been any other patient complaint against him in all his years of practice were not disputed.

25. Additionally, petitioner contends he has taken steps to address the Board's concerns expressed in the Decision following his First Petition for Reinstatement. He has taken his name off the building exterior and changed his telephone message, all in an effort to make certain no one gets the wrong impression that he is still actively practicing. The

Yellow pages advertisement has evidently expired and did not appear in the most recent book.

26. Petitioner finally claims that he does not need to perform Goldman Tonometry or dilated fundus examinations in his practice. He contends these tests are uncommon and that there are acceptable alternatives to needing to be able to perform these procedures. He contends these procedures are more recent developments in optometry, and he was not taught how to perform them in school. Thus, he reasons that his failure to pass a skills test on these procedures is not indicative of whether he is a safe and competent practitioner in his practice as he contemplates it going forward. Any patient who might need Goldman Tonometry or dilated fundus examination would be promptly referred to a colleague able to perform these tests, and he would consult with the referral optometrist in working out a treatment plan in the best interests of the patient and the patient's needs.

27. Dr. Robert Pedersen, an optometrist practicing in Stockton, and President of the San Joaquin Optometric Society, has mentored petitioner and tried to help him with his clinical skills directed toward passing the NBEO examinations. Petitioner has frequently shadowed Dr. Pedersen, and has tried to train petitioner in Goldman Tonometry, using himself as a patient as well as a few volunteers. Dr. Pedersen expressed his opinion that petitioner is a safe and competent practitioner who poses no danger to the public if allowed to return to active practice.

28. Petitioner's own testimony regarding the clinical skills testing in the NBEO examinations was enlightening. Although he accepted "fault" for his failure to pass certain portions, he noted that he was not familiar with the type of slit lamp used in one of the tests, and he ran out of time before he was able to become comfortable with it. It appeared that the biggest problem with petitioner's performance in the examinations was time. The tests are timed and the requisite clinical skills must be successfully demonstrated within a fixed period. Petitioner is slow and deliberate in his practice, and his common complaint was that he "ran out of time" before he was able to complete the tests. The skill not demonstrated within the requisite time period earns the same "fail" as does the skill fully demonstrated within the time period allotted but not competently performed.

29. Petitioner has not treated a patient since 2003. He is presently unemployed. He spends his time involved in several voluntary community service activities, and in keeping up with his continuing education and journal reading, as well as shadowing in the practices of those willing to have him present, as noted above. In response to questions, petitioner confirmed he has modern equipment. He contends he is presently competent to treat patients. He has kept his skills current by shadowing, observing and discussing treatment of various patients, watching testing and joining in the discussion of results, discussing cases with those mentoring him, and through continuing education and journal reading. He contends he is "careful all the time." He offered in response to questions about his struggle with Goldman Tonometry, that he would treat a patient with non-contact tonometry, dilate the patient to check for "floaters," check with biomicroscopy and then refer the patient to a colleague if necessary.

30. Petitioner's claims have a little merit, but largely lack it. Petitioner's constant complaint has been that the examinations that he was to pass to prove he is clinically safe to practice are unfair, problematic, and so forth with a variety of additional excuses. There may be some merit to some of his complaints, but none in and of themselves are persuasive, and all miss the essential point that the Board sought an independent third party assessment and acknowledgement of petitioner's clinical skills before permitting him to continue to practice. Despite petitioner's alternative approach to work around patients who might need dilated fundus examinations or Goldman Tonometry, by using non dilated fundus examination, biomicroscopy and referral to a colleague for Goldman Tonometry, this again avoids the central issue of petitioner's consistent failure to demonstrate these essential optometric clinical skills to an independent third party. The Board takes exception to petitioner's claims that skill and ability in performing Goldman Tonometry or dilated fundus examinations is collateral and uncommon in a successful daily clinical practice. These skills are essential. Petitioner's problem of consistent failure to successfully demonstrate reasonable clinical familiarity and competence with these skills has continued to date.

#### LEGAL CONCLUSIONS

1. Government Code section 11522 provides:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

2. California Code of Regulations (CCR), title 16, section 1516, provides:

[¶] ... [¶]

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:



- (1) Nature and severity of the act(s) or offense(s).
  - (2) Total criminal record.
  - (3) The time that has elapsed since commission of the act(s) or offense(s).
  - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
  - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
  - (6) Evidence, if any, of rehabilitation submitted by the licensee.
- (c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

3. Full compliance with all terms and conditions of probation is expected, and satisfactory compliance with all required terms and conditions of probation does not necessarily constitute rehabilitation. Relief from the requirements of probation generally, from any of the individual terms and conditions, or cause for reinstatement is reserved for one or a combination of the following:

- a. Exemplary probationary performance by proof of exceptional compliance with the existing terms to date; or
- b. Substantial and compelling evidence of rehabilitation; and/or
- c. Compelling circumstances beyond the control of the petitioner.

4. The purpose of a disciplinary proceeding is to afford protection to the public upon the rationale that the respect and confidence of the public is merited by eliminating from [or preventing the entry or reentry into] the ranks of practitioners those who are dishonest, amoral, disreputable, or incompetent.<sup>2</sup> The quality and quantity of proof of rehabilitation must be sufficient to overcome the board's former adverse determination.

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<sup>2</sup> *Fahmy v. Medical Board of California* (1995) 38 Cal. App.4<sup>th</sup> 810, 817.

Therefore, the quality and quantity of rehabilitation must be commensurate with the nature and gravity of the conduct resulting in the previous disciplinary action.<sup>3</sup>

5. Petitioner contends the Board should “consider alternatives” to continuing the revocation of petitioner’s certificate. Petitioner contends such “alternatives” should be crafted to both give petitioner a chance to prove his competence, and protect the public at the same time. But petitioner failed to offer much in the way of assistance to the Board in drafting the specifics of a proposal containing such alternatives and protections, or providing the Board with a reasonable proposal containing anything more in the way of reasonable assurances of competence and protection for the public beyond petitioner’s unsupported promises. In light of repeated failures upon opportunities to prove his clinical skills to the national examining body, petitioner’s unsupported promises of his own safety and competence are devoid of substance. Petitioner thus offered the Board nothing substantive in support of his proposal for the Board to grasp and implement. In fact, the contention was rather vague, and left it entirely to the Board to figure out just what alternatives and protections petitioner was suggesting should be implemented.

6. Petitioner’s rehabilitation is incomplete and insufficient to support reinstatement. Nevertheless, the Board offers petitioner here an alternative opportunity to obtain and produce the independent assurances of clinical skills, safety and competence it formerly sought through previous probationary requirements that petitioner take and successfully pass the NBEO clinical skills examination. It will also seek to remove the impediment to petitioner obtaining the hands on training he needs in order to learn or upgrade the skills he needs to pass the examination. The Order here allows petitioner the opportunity to obtain the training needed and prove through an independent third party that he has the requisite clinical skills needed to be reinstated with minimum safety standards for the public adequately met. Petitioner must obtain this training at a Board approved and recognized optometric institution, or through a Board approved third party practitioner/trainer willing to teach and train petitioner and who is willing to certify to the Board that petitioner has actually demonstrated to the practitioner/trainer or institution the requisite clinical skills to competently and safely practice optometry consistent with current standards of care and practice.

#### ORDER

The Petition for Reinstatement of Surrendered Certificate of Wyman Chan, O.D., is DENIED. However, the denial shall be STAYED upon the successful completion of the requirements and satisfaction of the Conditions Precedent (below) to returning to probationary practice set forth below.

If the Board, upon satisfactory proof made by petitioner that the Conditions Precedent have been successfully completed and satisfied according to their terms, the stay of the

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<sup>3</sup> *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.

denial shall take effect, and petitioner shall be admitted to probation for a period of three (3) years, during which time petitioner shall be on probation to the Board of Optometry, subject to the terms and conditions set forth below.

If the Board has not certified in writing that the Condition Precedent have been successfully completed and satisfied upon presentation of satisfactory proof to the Board during the period of two (2) years from the effective date of this Decision, unless the Board, for good cause shown in the exclusive discretion of the Board, extends the period, the stay shall not lift, and petitioner shall not be admitted to probation, and the probationary conditions set forth below shall not take effect, and the denial of this Petition shall become permanent.

### **Condition Precedent**

#### **1. Clinical Training Program**

Petitioner shall successfully complete a program of Board approved clinical training from a Board approved and recognized optometric educational institution of higher learning, or from a Board approved clinical instructor. The course of clinical training shall include, but not necessarily be limited to, instruction in binocular indirect techniques, dilated fundus examination and Goldman Tonometry, and any other clinical techniques the Board determines are required for modern clinical practice and were shown to be lacking in the results of the NBEO examinations taken by petitioner. In order to facilitate the training, petitioner shall be entitled to use the student exemption from the proscriptions against unlicensed practice of optometry for all training conducted under the direct supervision of the approved optometric institution of higher learning or any Board approved third party instructor/trainer. The Board's designee shall meet with petitioner to outline the training requirements and shall provide petitioner clear written guidelines of the Board's expectations and minimum requirements for the training, as well as guidance for selection of an institution or trainer the Board will approve for the training.

The clinical training may consist of all or part of the following, in addition to the above mentioned skills and procedures; a comprehensive assessment of petitioner's basic clinical and communication skills common to all clinicians; and optometric knowledge, skill and judgment pertaining to the practice of optometry, and at minimum, a 40 hour program of clinical education in the areas of practice in which petitioner failed in past NBEO examinations. Petitioner shall pay all expenses associated with the clinical training program.

Upon successful completion of the training, the approved clinical trainer or institution shall certify to the Board that petitioner meets minimum standards of care in the clinical skills identified by the Board at the outset of the training. Upon receipt and acceptance of the certification of successful training by the Board, the Board shall so indicate successful completion to petitioner in writing. Until petitioner successfully completes the training and the trainer or institution has certified that completion to the Board, petitioner may not be admitted to probation unless the Board otherwise approves in writing.

## **ADMISSION TO PROBATION**

Upon written notification from the Board to petitioner that he has successfully completed the Condition Precedent to admission to probationary practice, the stay of the denial of the Petition shall take effect, and petitioner shall be admitted to probation to the Board, subject to the following terms and conditions:

### **1. Monitored Practice**

Within 30 calendar days of the date petitioner is notified in writing by the Board that he has successfully completed the Condition Precedent and has been admitted to probation, petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed optometrists whose licenses are valid and in good standing. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering. The monitor shall be a practitioner with a practice similar to petitioner's practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs, including any costs imposed by the monitor.

The Board or its designee shall provide the approved monitor with copies of this and all previous Decisions of the Board, Accusation and Petition to Revoke Probation (documents), and a proposed monitoring plan. Within 15 calendar days of receipt of the documents and the proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the documents of the Board's prior actions, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of written notice by the Board that petitioner has been admitted to probation, and continuing throughout probation, petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of petitioner's performance, indicating the monitor's independent assessment of whether petitioner's practices are within current optometric standards of practice, and whether petitioner is practicing safely.

It shall be the sole responsibility of petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, petitioner shall, within 5 calendar days of such resignation or unavailability, so advise the Board in writing and submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, petitioner shall be suspended from the practice of optometry until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Petitioner shall cease the practice of optometry within 3 calendar days after being so notified by the Board or designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation and may constitute cause for immediate suspension.

Following the expiration of one half of the probationary period, petitioner may petition for the removal of the practice monitor condition. Proof of successful practice monitoring for the first eighteen months of probation shall be a condition precedent to granting of the Petition. Attestation under oath of the current monitor, that, in the monitor's professional opinion, monitoring is no longer required to assure patient safety and accuracy of patient charts and records, shall be prima facie evidence of successful monitoring.

## **2. Obey All Laws**

Petitioner shall obey all federal, state and local laws, all rules governing the practice of optometry in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

## **3. Quarterly Declarations**

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation. Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

## **4. Probation Unit Compliance**

Petitioner shall comply with all directions of the Board's probation unit. Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee.

Petitioner shall not engage in the practice of optometry in petitioner's place of residence. Petitioner shall maintain a current and renewed California Certificate of Registration.

Petitioner shall immediately inform the Board or its designee, in writing, of travel to any

areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

**5. Interview with the Division or Designee**

Petitioner shall be available in person for interviews either at petitioner's place of business or at the Board's office with the Board's designee, upon request, at various intervals and either with or without prior notice throughout the term of probation.

**6. Residing or Practicing Out-of-State**

In the event petitioner should leave the State of California to reside or to practice, petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is actively engaging in the practice of optometry, as defined in the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of optometry within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice, including the period of nonpractice set forth in the Condition Precedent to the return to active practice referred to below. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and Probation Compliance.

Petitioner's Certificate shall be automatically cancelled if petitioner's periods of temporary or permanent residence or practice outside California totals two years. However, petitioner's Certificate shall not be cancelled as long as petitioner has satisfied the Condition Precedent to admission to probation and returning to active practice set forth below and is residing and practicing optometry in another state of the United States and is on active probation with the optometry licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

**7. Failure to Practice Optometry - California Resident**

In the event petitioner resides in the State of California and for any reason petitioner stops practicing optometry in California, after having successfully satisfied the Condition Precedent to admission to probation and returning to the active practice of optometry, petitioner shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non- practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve petitioner of the responsibility to comply with the terms and conditions of

probation. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in the active practice of optometry as defined the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of optometry. All time prior to successful satisfaction of the Condition Precedent to be admitted to probation and return to active practice shall not be considered as time not spent in the practice of optometry for the purposes of this provision. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Petitioner's Certificate shall be automatically cancelled if petitioner resides in California for a total of two years after successful completion and notification by the Board that petitioner has successfully satisfied the Condition Precedent to admission to probation and return to the active practice of optometry, and fails to engage in California in the active practice of optometry, as described in the Business and Professions Code.

#### **8. Education Program**

Within 90 days of the effective date of the written notice from the Board that petitioner is admitted to probation following successful satisfaction of the Condition Precedent, and on an annual basis thereafter, petitioner shall submit to the Board for its prior approval, an educational program or course to be designated by the Board, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure, and shall be obtained with all costs paid by petitioner. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Petitioner shall provide written proof of attendance in such course or courses as are approved by the Board.

#### **9. Branch Offices**

During the period of probation, petitioner shall be restricted to a single office location, and shall be restricted as to the number and location of branch offices which the petitioner may operate or in which the petitioner may have any proprietary interest as designated and approved in writing by the Board.

#### **10. Advertising During Probation**

Petitioner shall, during the period of probation, prior to any publication or public dissemination, submit any and all advertisements of professional services in the field of optometry to the Board for prior approval. Such advertisement may be published or disseminated to the public only after written approval by the Board.

#### **11. Probation Monitoring Costs**

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board or its designee, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Optometry and delivered to the Board's designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

#### **12. Violation of Probation**

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Division, after giving petitioner notice and the opportunity to be heard, may revoke probation and reimpose the stayed denial of this Petition. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall retain continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

#### **13. Completion of Probation**

Petitioner shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's Certificate shall be fully restored.

#### **14. License Surrender**

Following the effective date of this Decision, and admission to probation following written notice of successful completion of the Conditions Precedent, if petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request the voluntary surrender of his certificate. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall, within 15 calendar days, deliver his wallet and wall certificate to the Board or its designee and petitioner shall cease to practice optometry. Upon the Board's acceptance of such a surrender, petitioner will no longer be subject to the terms and conditions of probation. Surrender of petitioner's

license shall be deemed disciplinary action. If respondent re-applies for a certificate of registration, the application shall be treated as a petition for reinstatement of a revoked



certificate.

DATED: September 27, 2010

A handwritten signature in black ink, appearing to read 'Lee A. Goldstein', written over a horizontal line.

LEE A. GOLDSTEIN, O.D.

President

Board of Optometry

Department of Consumer Affairs

State of California

RECEIVED BY  
STATE BOARD OF OPTOMETRY

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BEFORE THE  
BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of:

WYMAN CHAN, O.D.,

Petitioner.

Case No. 2001-71

OAH No. 2008100872

**DECISION**

This matter was heard by a quorum of the Board of Optometry (Board) on November 20, 2008, in Los Angeles. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided. The record was closed and the matter was submitted for decision, following which the Board met in an executive session and decided the matter on the day of the hearing.

Wyman Chan (Petitioner) was present and represented himself.

Jennifer S. Cady, Deputy Attorney General, California Department of Justice, appeared pursuant to Government Code section 11522.

FACTUAL FINDINGS

1. On or about July 15, 1968, the Board issued Certificate of Registration Number 5017 (certificate) to Petitioner.

2A. The Board, by Decision and Order effective July 14, 2003, in Case No. 2000-71 (OAH No. N-2002090449), adopted a Stipulated Settlement and Disciplinary Order resolving an accusation that had been brought against Petitioner.

2B. Pursuant to the Board's Decision and Order, Petitioner's certificate was revoked, with the revocation stayed while Petitioner was placed on three years probation under conditions including a 15 day suspension, 40 hours of education, reexamination, practice monitoring, practice restriction, and cost recovery in the amount of \$12,461.94.

2C. In the Stipulated Settlement and Disciplinary Order resolving the accusation, Respondent agreed that there was a factual basis for discipline against his certificate for unprofessional conduct with regard to four patients, including his failing to perform proper dilated fundus exams, failing to document or obtain health histories or visual acuities, and failing to refer a patient to a physician.

3A. Petitioner failed in four separate attempts to successfully complete the reexamination condition of his probation. For that reason, in or about October of 2005, the Board brought a petition to revoke Petitioner's probation.

3B. The Board, by Decision and Order effective March 10, 2006, in Case No. 2000-71 (OAH No. N-2005100203), adopted a Stipulated Settlement and Disciplinary Order resolving the petition to revoke probation that had been brought against Petitioner.

3C. Pursuant to the Board's Decision and Order, Petitioner's probation was extended an additional two years under conditions including that he pass the clinical portion of the National Board of Examiners in Optometry (NBEO) exam within a requisite time. It was further agreed that should Petitioner fail to comply with the reexamination condition on a timely basis, he would surrender his certificate to the Board. It was further agreed that all allegations contained in the accusation (which had been amended by agreement of the parties in the Stipulated Settlement and Disciplinary Order described in Finding 2A) and petition to revoke probation previously brought against Petitioner would be deemed as true should Petitioner seek to reinstate his certificate in the event that it had been surrendered by him.

3D. Petitioner failed the NBEO exam that he took within the requisite time frame. His administrative appeal of that exam was denied by the NBEO. The Board therefore requested Petitioner to surrender his certificate. On or about September 29, 2006, Petitioner surrendered to the Board his wall and pocket certificates.

4. The instant Petition for Reinstatement (petition) was received by the Board on October 24, 2008 (a little more than two years after Petitioner surrendered his certificate). Petitioner had previously submitted a similar petition for reinstatement in October of 2007, which he later withdrew.

5. Petitioner had no record of disciplinary action by the Board prior to that described above. While on probation with the Board, Petitioner essentially complied with the conditions of his probation, except for the reexamination condition discussed above and a few other omissions that were not alleged in the petition to revoke his probation. Although Petitioner paid some of the cost recovery, it was not established whether he has paid all of it.

6. Petitioner contends his certificate should be reinstated because he believes he has corrected the deficiencies that led to his discipline described above and he also believes he is now able to provide a better standard of care for his patients. He also believes that his fluency in the Cantonese dialect of the Chinese language would help the situation in his area where few optometrists are able to serve the segment of the population that only speak that language.

7. Petitioner has not been regularly employed since surrendering his certificate. He worked for a brief period as an enumerator for the United States Census Bureau, and otherwise has volunteered his time for various local community activities.

8. In the past two years, Petitioner has completed approximately 69 hours of continuing education, been tutored by various optometrists in clinical skills and has studied various different sources of optometric literature.

9. Petitioner has taken the NBEO clinical skills exam three separate times since surrendering his license. Although he has passed various individual components of that exam in at least one of those exams, he has not passed all of the required components together in any one session and therefore did not pass any of the three clinical skills exams.

10. The petition is supported by the recommendation letters of two optometrists in Petitioner's area, Brian D. Tracy, O.D., and Robert Pedersen, O.D. The petition is also supported by letters from two of Petitioner's past patients.

11. Petitioner testified that he did not agree with the allegations made against him in the initial accusation that led to the discipline imposed against his certificate. Petitioner also testified that he did not think the four exams administered to him while he was on probation with the Board were fair and that he thought they were scored unfairly. He also testified that he would not be in favor of any restrictions placed on his practice should his certificate be reinstated.

12. Petitioner testified that he has not practiced optometry since December of 2003. However, he still maintains his optometry office and attendant equipment, with signage outside identifying him as an optometrist; he still has a telephone in his office with an answering message indicating he is an optometrist; and he is still listed in his local yellow pages as an optometrist. Petitioner also testified that he has not disclosed the surrender of his certificate to several of his long-time patients.

#### LEGAL CONCLUSIONS

1. *Standard of Review.* The burden in this petition for reinstatement rests with Petitioner. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084.)

2. *Jurisdiction.* Government Code section 11522 provides that a person whose license has been revoked may petition the disciplining agency for reinstatement of that license after a period of not less than one year has elapsed from the effective date of the discipline. This statute applies in this case because the statutes dealing with the Board do not contain any different provisions for reinstatement. (Gov. Code, § 11522.) However, California Code of Regulations, title 16, section 1516 provides certain criteria to be evaluated when considering a petition for reinstatement under Government Code section 11522 (most of which is related to cases where the petitioner had been previously convicted of a crime), including evaluating "evidence of rehabilitation submitted by the petitioner . . . ."


3. *Disposition.* Petitioner failed to meet his burden of establishing by clear and convincing evidence that cause exists to reinstate his certificate. As demonstrated by his failure in three recent attempts to pass the NBEO clinical skills exam, Petitioner has not remedied the deficiencies in his clinical optometric skills that ultimately led to the surrender of his license. The evidence of rehabilitation submitted by Petitioner is substantially outweighed by that fact as well; even with all the continuing education, tutoring and optometric literature consumed by him, Petitioner is still unable to demonstrate his competency by passing a clinical skills exam. This situation indicates to the Board that, at this time, Petitioner cannot be trusted to render safe and competent optometric care to the public. Moreover, Petitioner did not demonstrate during the hearing an attitude consistent with satisfactory rehabilitation, in that he refused to accept responsibility for his past failures and instead blamed others. The Board is also concerned with the potential of Petitioner holding himself out to the public as a practicing optometrist, in that he maintains his office, signage, telephone answering system and advertising in a way that sends out a deceiving message to the public that he is still available to render optometric services. Under these circumstances, it was established that the order below is warranted to protect the public health, safety and welfare. (Factual Findings 1-12.)

ORDER

The petition for reinstate of Wyman Chan is denied.

IT IS SO ORDERED. This Decision shall be effective 01/28/2009, ~~2009~~.

Dated: 01/28/2009

  
\_\_\_\_\_  
LEE A. GOLDSTEIN, O.D., President  
Board of Optometry  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Wyman Gene Chan, O.D.  
5635 Stratford Circle, Suite 46  
Stockton, CA 95207

Respondent.

Agency Case No. 2000-71


OAH No. N2005 100203

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Optometry as its Decision in the above-entitled matter.

This Decision shall become effective March 10, 2006.

It is so ORDERED February 9, 2006

  
EDWARD P. HERNANDEZ, O. D.  
PRESIDENT  
BOARD OF OPTOMETRY

COPY

BILL LOCKYER, Attorney General  
of the State of California  
ELENA L. ALMANZO, State Bar No. 131058  
Deputy Attorney General  
California Department of Justice  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 322-5524  
Facsimile: (916) 327-8643

Attorneys for Complainant

BEFORE THE  
STATE BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Wyman Gene Chan

Respondent.

Case No. 2000-71

OAH No. N2005100203

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
proceeding that the following matters are true:

PARTIES

1. Taryn Smith (Complainant) is the Executive Officer of the State Board of  
Optometry. She brought this action solely in her official capacity and is represented in this  
matter by Bill Lockyer, Attorney General of the State of California, by Elena L. Almanzo,  
Deputy Attorney General.

2. Wyman Gene Chan (Respondent) is represented in this proceeding by  
attorneys Patricia Tweedy and Glenn Holley, whose address is 2001 I Street, Sacramento, CA  
95814

3. On or about July 15, 1968, the State Board of Optometry issued Certificate  
of Registration Number 5017 to Wyman Gene Chan (Respondent). The certificate will expire  
March 31, 2006, unless renewed.

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1 Board to issue this disciplinary order without further process.

2 CONTINGENCY

3 10. This stipulation shall be subject to approval by the State Board of  
4 Optometry. Respondent understands and agrees that counsel for Complainant and the staff of  
5 the State Board of Optometry may communicate directly with the Board regarding this  
6 stipulation, without notice to or participation by Respondent or his counsel. By signing the  
7 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
8 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
9 to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary  
10 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
11 action between the parties, and the Board shall not be disqualified from further action by having  
12 considered this matter.

13 11. The parties understand and agree that facsimile copies of this Stipulated  
14 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
15 force and effect as the originals.

16 12. In consideration of the foregoing admissions and stipulations, the parties  
17 agree that the (Board) may, without further notice or formal proceeding, issue and enter the  
18 following Order:

19 ORDER

20 IT IS HEREBY ORDERED that the revocation of Certificate of Registration  
21 number 5017 issued to Respondent Wyman Gene Chan is reimposed, and probation shall be  
22 extended for a period of two (2) years on the following terms and conditions of probation:

23 Each condition of probation contained herein is a separate and distinct condition.  
24 If any condition of this Order, or any application thereof, is declared unenforceable in part, or to  
25 any extent, the remainder of this Order, and all other applications thereof, shall not be affected.  
26 Each condition of this Order, and all other applications thereof, shall not be affected. Each  
27 condition of this order shall separately be valid and enforceable to the fullest extent permitted by  
28 law.

1                   1. Respondent shall take and pass the clinical portion of the exam provided by the  
2 National Board of Examiners in Optometry offered in April of 2006. Respondent shall only be  
3 scored on the following skills of the NBEO exam: Station 1: sections 1 Case History/Patient  
4 Communication, 2. Near Cover Test & Extraocular Motility Evaluation, 3. Pupil Testing; Station  
5 2: sections 6. Biomicroscopy, 7. Goldmann Applanation Tonometry; Station 3: sections 10.  
6 Retinoscopy, 11. Distance Subjective Refraction, 12. Accommodation Testing, 13. Heterophoria  
7 and Vergence Testing at Near; Station 5: sections 16. Binocular Indirect Ophthalmoscopy, 17.  
8 Non-Contract Fundus Lens Evaluation, 18. Soft Contact Lens Insertion, Evaluation, and  
9 Removal, 19. Rigid Gas Permeable Contact Lens Insertion, Evaluation and Removal.

10                   2. If respondent fails to take or pass the clinical portion of the exam as described  
11 above in paragraph 1, respondent agrees to the surrender of his Certificate of Registration  
12 Number 5017 and to conditions 4 through 7. If respondent passes the clinical portions described  
13 above in paragraph 1 of the exam offered by the National Board of Examiners in Optometry in  
14 April of 2006, conditions numbers 8-20 shall apply.

15                   3. Respondent agrees to execute an authorization for the release of a certified copy  
16 of his scoring sheets for the April exam to the California Board of Optometry.

17                   4. Respondent further agrees that the surrender of Respondent's Certificate of  
18 Registration to practice optometry and the acceptance of the surrendered license by the Board  
19 shall constitute the imposition of discipline against Respondent. This stipulation constitutes a  
20 record of the discipline and shall become a part of Respondent's license history with the Board.

21                   5. Respondent further agrees that he shall lose all rights and privileges as an  
22 optometrist in California as of the effective date of the Board's Decision and Order.

23                   6. Respondent shall cause to be delivered to the Board both his wall and  
24 pocket license certificate of Registration to practice optometry within thirty days of being  
25 notified of a failed exam.

26                   7. Respondent fully understands and agrees that if he ever files an application  
27 for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a  
28 petition for reinstatement. Respondent must comply with all the laws, regulations and

1 procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all  
2 of the charges and allegations contained in Accusation and Petition to Revoke Probation number  
3 2000-71 shall be deemed to be true, correct and admitted by Respondent when the Board  
4 determines whether to grant or deny the petition.

5           8. Obey all laws: Respondent shall obey all federal and state and local laws. A  
6 full and detailed account of any and all violations of law shall be reported by the respondent to  
7 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of  
8 compliance with this condition, respondent shall submit completed fingerprint forms and  
9 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted  
10 as part of the licensure application process.

11           Criminal Court Orders: If respondent is under criminal court order, including  
12 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
13 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

14           9. Comply with the Board's Probation Program: Respondent shall fully comply  
15 with the conditions of the Probation Program as set forth by the Board herein and shall cooperate  
16 with representatives of the Board in its monitoring and investigation of the respondent's  
17 compliance with the Board's Probation Program as set forth herein. Respondent shall inform the  
18 Board in writing within no more than 15 days of any address change and shall at all times  
19 maintain an active, current license status with the Board including during any period of  
20 suspension.

21           Respondent shall comply with the Board's probation surveillance program,  
22 including but not limited to, allowing access to the Respondent's optometric practice and patient  
23 records upon request of the Board or its agents.

24           Upon successful completion of probation, respondent's license shall be fully  
25 restored.

26           10. Report in Person: Respondent, during the period of probation, shall appear in  
27 person at interviews/meetings as directed by the Board or its designated representatives.

28           11. Residency, Practice, or licensure outside of state: Periods of residency or

1 practice as an optometrist outside of California shall not apply toward the reduction of this  
2 probation time period. Respondent's probation is tolled, if and when he resides outside of  
3 California. The respondent must provide written notice to the Board within 15 days of any  
4 change of residency or practice outside the state, and within 30 days prior to re-establishing  
5 residency or returning to practice in this state.

6 Respondent shall provide a list of all states and territories where he or she has  
7 ever been licensed as an optometrist. Respondent shall further provide information regarding the  
8 status of each license and any changes in such license status during the term of probation.  
9 Respondent shall inform the Board if he applies for or obtains a new optometry license during  
10 the period of probation.

11 12. Submit Written Reports: Respondent shall, during the period of probation,  
12 submit or cause to be submitted quarterly written reports/ declarations and verifications of  
13 actions under penalty of perjury, as required by the Board. These quarterly reports/declarations  
14 shall contain statements relative to respondent's compliance with all of the conditions of the  
15 Board's Probation Program. Respondent shall immediately execute all release of information  
16 forms as may be required by the Board or its representatives.

17 Respondent shall provide a copy of this decision to the optometric regulatory  
18 agency in every state and territory in which he has an optometry license.

19 13. Function as an Optometrist: Respondent, during the period of probation, shall  
20 engage in the practice of optometry in California for a minimum of 24 hours per week for 6  
21 consecutive months or as determined by the Board.

22 For purposes of compliance with this section, "engage in the practice of  
23 optometry" may include, when approved by the Board, volunteer work as an optometrist, or work  
24 in any non-direct patient care position that requires licensure as an optometrist.

25 If respondent has not complied with this condition during the probationary term,  
26 and the respondent has presented sufficient documentation of his good faith efforts to comply  
27 with this condition, and if no other condition has been violated, the Board in its discretion, may  
28 grant an extension of the respondent's probation period up to one year without further hearing in

1 order to comply with this condition. During the one year extension, all original conditions of  
2 probation shall apply.

3 14. Employment Approval and Reporting Requirements: Respondent shall  
4 obtain prior approval from the Board before commencing or continuing in the practice of  
5 optometry. Respondent shall cause to be submitted to the Board any available performance  
6 evaluations and other employment related reports as an optometrist upon the request of the  
7 Board.

8 If working as an employee, Respondent shall provide a copy of this decision to his  
9 employer and immediate supervisors prior to the commencement of the practice of optometry.

10 In addition the above, respondent shall notify the Board in writing within seventy-  
11 two(72) hours after he obtains any optometric employment. Respondent shall notify the Board  
12 in writing within seventy-two(72) hours after he is terminated or separated, regardless of cause,  
13 from any optometric employment with a full explanation of the circumstances surrounding the  
14 termination or separation.

15 15.. Respondent's level of supervision shall be the following:

16 Moderate - The individual providing supervision and/or collaboration is in the  
17 patient care unit or in any other work setting at least half the hours Respondent works.

18 Respondent shall practice only under the direct supervision of an optometrist in  
19 good standing (no current discipline) with the Board of Optometry.

20 16. Employment Limitations: Respondent shall not work in any health care  
21 setting as a supervisor of optometrists. The Board may additionally restrict respondent from  
22 supervising technicians and/ or unlicensed assistive personnel on a case-by-case basis.

23 Respondent shall not work as a faculty member in an approved school of  
24 optometry or as an instructor in a Board approved continuing education program.

25 If Respondent is working or intends to work in excess of 40 hours per week, the  
26 Board may request documentation to determine whether there should be restrictions on the hours  
27 of work.

28 17. Complete Optometry Course(s). Respondent, at his own expense, shall enroll

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1 and successfully complete 50 hours of continuing education within 18 months of the effective  
2 date of this decision. The continuing education shall be in addition to the continuing education  
3 required for licensure.

4 Respondent shall obtain prior approval from the Board before enrolling in the  
5 continuing education courses. Respondent shall submit to the Board the original transcripts or  
6 certificates of completion for the above required course(s). The Board shall return the original  
7 documents to Respondent after photocopying them for its records

8 18. Cost Recovery. Respondent shall pay to the Board costs associated with its  
9 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the  
10 amount of \$3,000. Respondent shall be permitted to pay these costs in a payment plan approved  
11 by the Board, with payments to be completed no later than three months prior to the end of the  
12 probation term.

13 If Respondent has not complied with this condition during the probationary term,  
14 and Respondent has presented sufficient documentation of his good faith efforts to comply with  
15 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
16 grant an extension of Respondent's probation period up to one year without further hearing in  
17 order to comply with this condition. During the one year extension, all original conditions of  
18 probation will apply.

19 19. Violation of Probation. If Respondent violates the conditions of his  
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set  
21 aside the stay order and impose the stayed discipline revocation of Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation has  
23 been filed against Respondent's license or the Attorney General's Office has been requested to  
24 prepare an accusation or petition to revoke probation against Respondent's license, the  
25 probationary period shall automatically be extended and shall not expire until the accusation or  
26 petition has been acted upon by the Board.

27 20. License Surrender. During Respondent's term of probation, if he ceases  
28 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of

1 probation, Respondent may surrender his license to the Board. The Board reserves the right to  
2 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
3 take any other action deemed appropriate and reasonable under the circumstances, without  
4 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent  
5 will no longer be subject to the conditions of probation.

6 Surrender of Respondent's license during the period of probation shall be  
7 considered a disciplinary action and shall become a part of Respondent's license history with the  
8 Board. An optometrist whose license has been surrendered may petition the Board for  
9 reinstatement no sooner than one year from the effective date of the disciplinary decision.

10  
11 ACCEPTANCE

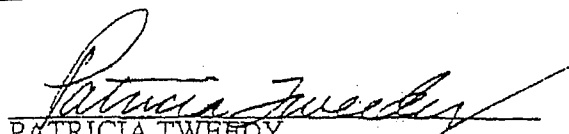
12 I have carefully read the above Stipulated Surrender of License and Order and  
13 have fully discussed it with my attorneys, Patricia Tweedy and Glenn Holley. I understand the  
14 stipulation and the effect it will have on my Optometrist. I enter into this Stipulated Surrender of  
15 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
16 Decision and Order of the State Board of Optometry.

17 DATED: 1-19-06

18  
19   
20 WYMAN GENE CHAN  
21 Respondent

22 I have read and fully discussed with Respondent Wyman Gene Chan the terms  
23 and conditions and other matters contained in this Stipulated Settlement and Disciplinary Order.  
24 I approve its form and content.

25 DATED: 1-19-06

26  
27   
28 PATRICIA TWEEDY  
Attorney for Respondent

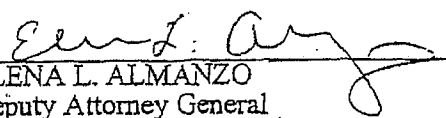
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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

DATED: 1/19/06

BILL LOCKYER, Attorney General  
of the State of California

  
ELENA L. ALMANZO  
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SA2005100036  
3stipulation chan.wpd



1 BILL LOCKYER, Attorney General  
of the State of California  
2 ELENA L. ALMANZO, State Bar No. 131058  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 322-5524  
Facsimile: (916) 327-8643

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**STATE BOARD OF OPTOMETRY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Petition to Revoke Probation  
11 Against:

Case No. 2000 71

12 WYMAN GENE CHAN

13 Respondent.

**PETITION TO REVOKE  
PROBATION**

14  
15 Complainant alleges:

16 **PARTIES**

17 1. Taryn Smith (Complainant) brings this Petition to Revoke Probation solely  
18 in her official capacity as the Executive Officer of the Board of Optometry, Department of  
19 Consumer Affairs..

20 2. On or about July 15, 1968, the State Board of Optometry issued Certificate  
21 of Registration Number 5017 to Wyman Gene Chan (Respondent). The certificate will expire  
22 March 31, 2006, unless renewed. On or about March 4, 1998, Wyman Gene Chan became  
23 certified to utilize Therapeutic Pharmaceutical Agents.

24 3. Effective July 14, 2003, in the disciplinary action entitled *In the Matter of*  
25 *the Accusation Against Wyman Gene Chan*, Case Number 2000-71, the Board revoked his  
26 license. The revocation was stayed and Respondent was placed on probation for three(3) years  
27 on terms and conditions including condition number nine which follows:

28 ///

1 "Within 60 days of the effective date of this decision or within some other time as  
2 prescribed in writing by the board, Respondent shall take and pass an oral or written  
3 exam, in a subject to be administered by the board or its designee. If Respondent fails  
4 this examination, Respondent must take and pass a re-examination as approved by the  
5 board. The waiting period between repeat examinations shall at six month intervals until  
6 success is achieved. The Respondent shall pay the cost of any such examination.  
7 Respondent shall not practice optometry until Respondent has passed the required  
8 examination and has been so notified by the Board in writing. Failure to pass the  
9 required examination no later than 100 days prior to the termination date of probation  
10 shall constitute a violation of probation."

11 4. Respondent has failed to comply with the following terms and conditions  
12 of his probation, the violation of any one of which, in and of itself, constitutes a sufficient basis  
13 upon which to revoke Respondent's probation and Certificate to Practice Optometry.

14 5. Section 125.3 of the Code provides, in pertinent part, that the Board  
15 may request the administrative law judge to direct a licensee found to have committed a  
16 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
17 investigation and enforcement of the case.

#### 18 **FIRST CAUSE TO REVOKE PROBATION**

##### 19 **(Failure to Pass Examination)**

20 6. Respondent has failed to take and pass an examination as required by  
21 condition nine of his probation. The circumstances follow:

22 A. On or about September 11, 2003, respondent was administered a safety  
23 and skills examination at the University of California at Berkeley School of Optometry which is  
24 given to second and third year optometry students to determine their level of skill and safety.  
25 Respondent failed the exam in the following areas:

26 1. he performed the Goldmann Tonometry exam below the standard and the  
27 test was stopped in the interest of patient safety;

28 ///

1                   2.     he failed to fasten the tonometry prism in place causing the metal ring to  
2 come into contact with the patient's cornea;

3                   3.     he failed to use the cobalt filter;

4                   4.     he tried to force the slit lamp up to the patient's eye risking contact with  
5 the patient's cornea; and

6                   5.     the non-fundus lens evaluation was halted for patient safety due to  
7 respondent's holding the lens up to the eye such that it would come into contact with the eye.

8                   B.     On or about March 18, 2004, respondent was administered a safety and  
9 skills examination at the University of California at Berkeley School of Optometry which is  
10 given to second and third year optometry students to determine their level of skill and safety.

11 Respondent failed the exam in the following areas:

12                   1.     he failed all sections of the entry level proficiency exam;

13                   2.     in the binocular indirect ophthalmoscopy he was unable to obtain  
14 acceptable views;

15                   3.     in Goldmann Tonometry he lacked skills to operate the exam in a safe  
16 procedure.

17                   C.     On or about September 24, 2004, respondent was administered a safety  
18 and skills examination at the University of California at Berkeley School of Optometry which is  
19 given to second and third year optometry students to determine their level of skill and safety.

20 Respondent failed the exam in the following areas:

21                   1.     in vergence testing, respondent hit a patient in the face with a near point  
22 rod;

23                   2.     the Goldmann Tonometry portion of the exam was halted twice in the  
24 interest of patient safety in that he had a tendency to over-applanate the cornea during the  
25 adjustment of the slit lamp and used excessive force; and

26                   3.     in the non-contact fundus lens evaluation, he placed the lens on the eye in  
27 contact with the cornea.

28 ///

1 D. On or about March 18, 2004, respondent was administered a safety and  
2 skills examination at the University of California at Berkeley School of Optometry which is  
3 given to second and third year optometry students to determine their level of skill and safety.  
4 Respondent failed the exam.

5 E. Respondent was scheduled to take part III (clinical skills and patient care)  
6 of the National Board of Examiners in Optometry Examination in August of 2005. Respondent  
7 failed to take the August Exam.

8 PRAYER

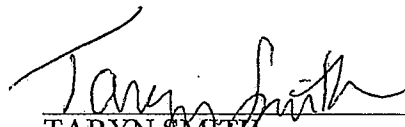
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
10 alleged, and that following the hearing, the State Board of Optometry issue a decision:

11 1. Revoking the probation that was granted by the Board of Optometry in  
12 case number 2000-17 and imposing the disciplinary order that was stayed thereby revoking  
13 Certificate of Registration No. 5017 issued to Wyman Gene Chan.

14 2. Ordering Wyman Gene Chan to pay the State Board of Optometry the  
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: October 31, 2005

19  
20  
21   
22 TARYN SMITH  
23 Executive Officer  
24 State Board of Optometry  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
28

BEFORE THE  
BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

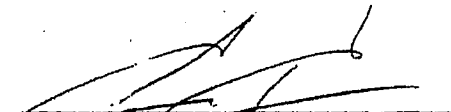
In the Matter of the Accusation	)	No. 2000 71
Against:	)	
	)	OAH No. N-2002090449
Wyman Gene Chan	)	
	)	
Respondent.	)	
_____	)	

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its decision in this matter.

This Decision shall become effective July 14, 2003.

It is so ORDERED June 14, 2003.

  
EDWARD P. HERNANDEZ, O. D.  
PRESIDENT  
BOARD OF OPTOMETRY

BILL LOCKYER, Attorney General  
of the State of California  
ELENA L. ALMANZO, State Bar No. 131058  
Deputy Attorney General  
California Department of Justice  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 322-5524  
Facsimile: (916) 327-8643

Attorneys for Complainant

BEFORE THE  
BOARD OF OPTOMETRY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WYMAN GENE CHAN

Respondent.

Case No. 2000 71

OAH No. N-2002090449

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
above-entitled proceedings that the following matters are true:

PARTIES

1. Karen L. Ollinger (Complainant) was the Executive Officer of the Board  
of Optometry. She brought this action solely in her official capacity and is represented in this  
matter by Bill Lockyer, Attorney General of the State of California, by Elena L. Almanzo,  
Deputy Attorney General.

2. Respondent Wyman Chan (Respondent) is represented in this proceeding  
by attorney Robert B. Zaro, whose address is Law Offices of Robert B. Zaro, 915 L Street,  
Suite 1240, Sacramento, CA 95814.

3. On or about July 15, 1968, the Board of Optometry issued Certificate of  
Registration Number 5017 to Wyman Gene Chan, O.D. (Respondent). The Certificate of

///

1 Registration was in full force and effect at all relevant times to the charges brought herein and  
2 will expire on March 31, 2002, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2000 71 was filed before the Board of Optometry (Board),  
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation  
6 and all other statutorily required documents were properly served on Respondent on June 3,  
7 2002. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of  
8 Accusation No. 2000 71 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and  
11 understands the charges and allegations in Accusation No. 2000 71. Respondent has also  
12 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
13 Settlement and Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the  
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
16 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
17 the right to present evidence and to testify on his own behalf; the right to the issuance of  
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
19 reconsideration and court review of an adverse decision; and all other rights accorded by the  
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
22 each and every right set forth above.

23 8. The parties agree that the Accusation in Case Number 2000 71 shall be  
24 amended as follows:

25 A. Respondent is subject to disciplinary action pursuant to section 3109 in that he failed  
26 to perform a dilated fundus exam on patient B.O.

27 B. Respondent is subject to disciplinary action under section 3090 and Title 16 California  
28 Code of Regulations section 1510 in that when respondent treated patients O.G. and P.C.

1 respondent was professionally inefficient and was guilty of unprofessional conduct by failing to  
2 document or obtain a health history and failed to provide a diagnosis and document visual  
3 acuities.

#### 4 CULPABILITY

5 9. Respondent, without making specific admissions, stipulates that there is a  
6 factual basis for the imposition of discipline based upon the totality of the matters alleged in the  
7 accusation as amended,. Respondent further agrees that in any future disciplinary proceeding the  
8 allegations in Accusation No. 2000 71 shall be deemed admitted.

9 10. Respondent agrees that his Certificate of Registration is subject to  
10 discipline and he agrees to be bound by the Board of Optometry (Board) 's imposition of  
11 discipline as set forth in the Disciplinary Order below.

#### 12 RESERVATION

13 11. The admissions made by Respondent herein are only for the purposes of  
14 this proceeding, or any other proceedings in which the Board of Optometry or other professional  
15 licensing agency is involved, and shall not be admissible in any other criminal or civil  
16 proceeding.

#### 17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board of Optometry.  
19 Respondent understands and agrees that counsel for Complainant and the staff of the Board of  
20 Optometry may communicate directly with the Board regarding this stipulation and settlement,  
21 without notice to or participation by Respondent or his counsel. By signing the stipulation,  
22 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind  
23 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt  
24 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall  
25 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
26 between the parties, and the Board shall not be disqualified from further action by having  
27 considered this matter.

28 13. The parties understand and agree that facsimile copies of this Stipulated



1 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
2 force and effect as the originals.

3 14. In consideration of the foregoing admissions and stipulations, the parties  
4 agree that the Board may, without further notice or formal proceeding, issue and enter the  
5 following Disciplinary Order:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Certificate of Registration Number 5017 issued  
8 to Respondent Wyman Chan is revoked. However, the revocation is stayed and Respondent is  
9 placed on probation for three (3) years on the following terms and conditions.

10 1. **Actual Suspension.** Certificate of Registration number 5017 issued to  
11 Respondent Wyman Chan is suspended for a period of 15 (fifteen) days.

12 2. **Obey All Laws.** Respondent shall obey all federal, state and local laws,  
13 and all rules governing the practice of optometry in California.

14 3. **Cooperate with Probation Surveillance.** Respondent shall comply with  
15 the board's probation surveillance program; including but not limited to allowing access to the  
16 probationer's optometric practice(s) and patient records upon request of the board or its agent.

17 4. **Tolling of Probation If Respondent Moves Out-of-State.** The period of  
18 probation shall not run during the time Respondent is residing or practicing outside the  
19 jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of  
20 California to reside or practice elsewhere, Respondent is required to immediately notify the board  
21 in writing of the date of departure, and the date of return, if any.

22 5. **Completion of Probation.** Upon successful completion of probation,  
23 Respondent's certificate will be fully restored.

24 6. **Violation of Probation.** If Respondent violates probation in any respect,  
25 the board, after giving Respondent notice and opportunity to be heard, may revoke probation and  
26 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is  
27 filed against Respondent during probation, the board shall have continuing jurisdiction until the  
28 matter is final, and the period of probation shall be extended until the matter is final.

1                   7.     **Lens Prescriptions - Maintain Records.** Respondent shall maintain a  
2 record of all lens prescriptions dispensed or administered by Respondent during probation,  
3 showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the  
4 services and goods involved in the prescription, and 4) the visual impairment identified for which  
5 the prescription was furnished.

6                   Respondent shall keep these records in a separate file or ledger, in chronological  
7 order, and shall make them available for inspection and copying by the board or its designee,  
8 upon request.

9                   8.     **Education Course.** Within 90 days of the effective date of this decision,  
10 and on an annual basis thereafter, Respondent shall submit to the board for its prior approval an  
11 educational program or course to be designated by the board, which shall not be less than 40  
12 hours per year, for each year of probation. This program shall be in addition to the Continuing  
13 Optometric Education requirements for re-licensure, and shall be obtained with all costs being  
14 paid by Respondent. Following the completion of each course, the board or its designee may  
15 administer an examination to test Respondent's knowledge of the course. Respondent shall  
16 provide written proof of attendance in such course or courses as are approved by the board.

17                  9.     **Reexamination.** Within 60 days of the effective date of this decision, or  
18 within some other time as prescribed in writing by the board, Respondent shall take and pass an  
19 oral or written exam, in a subject to be designated and administered by the board or its designee.  
20 If Respondent fails this examination, Respondent must take and pass a re-examination as  
21 approved by the board. The waiting period between repeat examinations shall be at six month  
22 intervals until success is achieved. The Respondent shall pay the cost of any such examination.

23                  Respondent shall not practice optometry until Respondent has passed the required  
24 examination and has been so notified by the board in writing. Failure to pass the required  
25 examination no later than 100 days prior to the termination date of probation shall constitute a  
26 violation of probation.

27                  10.    **Monitoring.** Within 30 days of the effective date of this decision,  
28 Respondent shall submit to the board for its prior approval a plan of practice in which

1 Respondent's practice shall be monitored by another optometrist, who shall provide periodic  
2 reports to the board. Any cost for such monitoring shall be paid by Respondent.

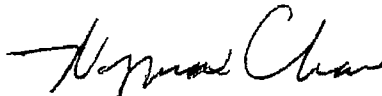
3 11. Practice Restriction. During the period of probation, the Respondent  
4 shall be restricted to practice at his office located at 5635 Statford Circle, Suite 46, Stockton,  
5 California 95207 unless he obtains prior approval from the board to practice at another location.

6 12. Cost Recovery. Respondent shall reimburse the Board its costs in the  
7 amount of \$12,461.94 within two years of the effective date of the Board's decision. Failure to  
8 reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the  
9 probation.

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
12 have fully discussed it with my attorney, Robert B. Zaro. I understand the stipulation and the  
13 effect it will have on my Certificate of Registration Number 5017 I enter into this Stipulated  
14 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
15 bound by the Decision and Order of the Board of Optometry.

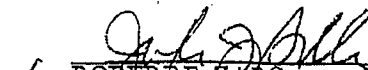
16 DATED: 5-13-03

17 

18 WYMAN CHAN  
19 Respondent

20  
21 I have read and fully discussed with Respondent Wyman Chan the terms and  
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
23 Order. I approve its form and content.

24 DATED: 5/13/03

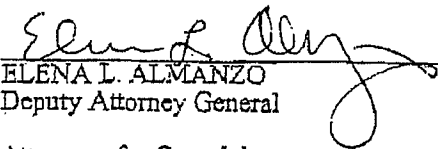
25  
26   
27 ROBERT B. ZARO  
28 Attorney for Respondent

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
3 submitted for consideration by the Board of Optometry of the Department of Consumer Affairs.

4  
5 DATED: May 16, 2003

6 BILL LOCKYER, Attorney General  
7 of the State of California

8   
9 ELENA L. ALMANZO  
10 Deputy Attorney General

11 Attorneys for Complainant  
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27 DOJ Docket Number: 03581110-SA2001AE1081  
28

**Exhibit A**  
**Accusation No. 2000 71**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 ELENA L. ALMANZO, State Bar No. 131058  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 322-5524  
Facsimile: (916) 327-8643  
6  
7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF OPTOMETRY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2000 71

13 WYMAN GENE CHAN, O.D.  
14 WYMAN GENE CHAN, O.D.  
5635 Stratford Circle, Suite 46  
15 Stockton, CA 95207

**ACCUSATION**

16 Certificate of Registration No. 5017

Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Karen L. Ollinger (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Optometry, Department of Consumer  
21 Affairs.

22 2. On or about July 15, 1968, the Board of Optometry issued Certificate of  
23 Registration Number 5017 to Wyman Gene Chan, O.D., Wyman Gene Chan, O.D. (Respondent).  
24 The Certificate of Registration was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on March 31, 2002, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board of Optometry (Board), under  
28 the authority of the following sections of the Business and Professions Code (Code).

1           4.       Section 3090 of the Code states, in pertinent part, that the certificate of  
2 registration of any person may be revoked or suspended for a fixed period by the Board for any of  
3 the following:

4           (a)       Violating or attempting to violate, directly or indirectly, or assisting in or  
5 abetting the violation, of or conspiring to violate, any provision of Chapter 7 (commencing  
6 with Section 3000) of the Business and Professions Code or of the rules and regulations  
7 adopted by the Board;

8           (b)       Unprofessional conduct;

9           (c)       Gross ignorance;

10          (d)       Inefficiency in his or her profession.

11          5.       Section 3109 of the Code states, in pertinent part that it shall be  
12 unprofessional conduct to fail to refer a patient to an appropriate physician where an examination  
13 of the eyes indicates a substantial likelihood of any pathology which requires the attention of the  
14 appropriate physician.

15          6.       Title 16, California Code of Regulations, section 1510, provides in  
16 pertinent part that inefficiency in the profession is indicated by the failure to use, or the lack of  
17 proficiency in the use of the ophthalmoscope, the retinoscope, the ophthalmometer (or  
18 Keratometer), tonometer, biomicroscope, any one of the modern refracting instruments such as  
19 the phoropter, refractor, etc., or the phorometer-trial frame containing phoria and duction  
20 measuring elements or a multicelled trial frame, trial lenses, and prisms, in the conduct of an  
21 ocular examination; the failure to make and keep an accurate record of findings; lack of  
22 familiarity with, or neglect to use, a tangent screen or perimeter or campimeter; and the failure to  
23 make a careful record of findings when the need of the information these instruments afford is  
24 definitely indicated.

25          7.       Section 125.3 of the Code provides, in pertinent part, that the Board may  
26 request the administrative law judge to direct a licentiate found to have committed a violation or  
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
28 and enforcement of the case.

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1. SECOND CAUSE FOR DISCIPLINE

2. 9. Respondent is subject to disciplinary action under section 3109 for  
3. unprofessional conduct in that respondent failed to refer patient J.T. to a physician. The  
4. circumstances follow:

5. A. During the entire period when respondent treated J.T. respondent failed to  
6. perform an examination of the peripheral retina or to refer J.T. to a physician who could perform such  
7. examination.

8. B. On or about June 6, 1998, J.T. reported that respondent discussed a "yellowish  
9. fluid like substance around the retina area". However, respondent failed to refer J.T. to a physician  
10. to perform an examination of J.T.'s retina.

11. PRAYER


12. WHEREFORE, Complainant requests that a hearing be held on the matters herein  
13. alleged, and that following the hearing, the Board of Optometry issue a decision:

14. 1. Revoking or suspending Certificate of Registration Number 5017, issued to  
15. Wyman Gene Chan, O.D.;

16. 2. Ordering Wyman Gene Chan, O.D. to pay the Board of Optometry the  
17. reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
18. Professions Code section 125.3;

19. 3. Taking such other and further action as deemed necessary and proper.

20. DATED: May 21, 2002

21.   
22. KAREN L. OLLINGER  
23. Executive Officer  
24. Board of Optometry  
25. Department of Consumer Affairs  
26. State of California  
27. Complainant